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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BOARD OF TRUSTEES OF THE CONSTRUCTION INDUSTRY AND LABORERS HEALTH AND WELFARE TRUST; THE BOARD OF TRUSTEES OF THE CONSTRUCTION INDUSTRY AND LABORERS JOINT PENSION TRUST; THE BOARD OF TRUSTEES OF THE CONSTRUCTION INDUSTRY AND LABORERS VACATION TRUST; and THE BOARD OF TRUSTEES OF THE SOUTHERN NEVADA LABORERS LOCAL 872 TRAINING TRUST,

CASE NO.:

COMPLAINT

Plaintiffs,

V.

TODD BOTT GENERAL CONTRACTING,
LLC d.b.a TBC CONSTRUCTORS &
GENERAL CONTRACTING, a Nevada
limited liability company,

Defendant.

Plaintiffs allege:

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1500 and the Court has original jurisdiction pursuant to 29 U.S.C. § 1132(e). Venue is proper pursuant to 29 U.S.C. § 1132(e)(2).

1 2. The Plaintiffs are the Boards of Trustees of the Construction Industry and Laborers
 2 Health and Welfare Trust, the Construction Industry and Laborers Joint Pension Trust, the
 3 Construction Industry and Laborers Vacation Trust, the Southern Nevada Laborers Local 872
 4 Training Trust (collectively referred to as “Trust Funds”) and are fiduciaries for purposes of
 5 ERISA.

6 3. Todd Bott General Contracting, LLC d.b.a TBC Constructors & General
 7 Contracting, a Nevada limited liability company, (“TBC”) acted as an employer within the State
 8 of Nevada employing persons (“Covered Employees”) who perform work covered by a collective
 9 bargaining agreement (“CBA”) between TBC and the Construction Industry and Laborers Union
 10 Local 872.

11 4. The CBA requires TBC to make employee benefit contributions to the Trust Funds
 12 on behalf of its Covered Employees.

13 5. The Trust Funds are ERISA employee benefit trust funds that provide benefits to
 14 Covered Employees.

15 6. The Trust Funds are established by Trust Agreements (“Trust Agreements”).

16 7. Under ERISA and the Trust Agreements, TBC is obligated to make its books and
 17 records available for contract compliance review (“Audit”).

18 8. TBC has failed to respond to the Trust Funds’ requests to make its books and
 19 records available for Audit.

20 9. The Trust Funds have insufficient facts, records or information available to
 21 calculate amounts due.

22 10. If an employer signatory to the CBA fails to make its books and records available
 23 for an Audit, the Trust Agreements and the Trust Funds’ Collection Policy and Procedures permit
 24 the Trust Funds to presume contributions owed equal the higher of (1) the average annual
 25 contributions reported by the employer over the three years prior to the audit period or (2)
 26 \$100,000 for each year covered by the attempted audit.

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FIRST CLAIM FOR RELIEF

Equitable Relief – 29 U.S.C. § 1132(a)(3)

11. Paragraphs 1 through 10 are restated and incorporated by reference.

12. The Trust Funds have repeatedly requested that TBC make its books and records available for an Audit as required by ERISA and the Trust Agreements.

13. TBC has repeatedly refused to make its books and records available.

14. The Trust Funds request this Court compel TBC, in accordance with 29 U.S.C. § 1132(a)(3), to deliver or make available to the Trust Funds all papers and documentation necessary to permit the Trust Funds or their designee to perform an Audit.

SECOND CLAIM FOR RELIEF

ERISA Delinquent Contributions – 29 U.S.C. § 1145.

15. Paragraphs 1 through 14 are restated and incorporated by reference.

16. Upon information and belief, TBC has failed to meet its obligations to remit employee benefit contributions to the Trust Funds as set forth in the CBA and Trust Agreements, and as required by 29 U.S.C. § 1145.

17. As a result of its delinquency, TBC is liable to the Trust Funds for unpaid contributions, interest, liquidated damages, audit fees and attorneys' fees, as provided by 29 U.S.C. § 1132(g), the CBAs, Trust Agreements, and applicable Collection Policy.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an Order compelling TBC, to deliver or make available to the Trust Funds all papers and documentation necessary to permit the Trust Funds or their designee to perform an Audit;

2. A judgment against TBC, for damages, including delinquent employee benefit contributions, interest, liquidated damages, and attorneys' fees and costs;

3. For other equitable relief as provided by ERISA; and

1 4. For such other and further relief as the Court deems proper.
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Dated: March 7, 2022.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

4 /s/ Christopher M. Humes
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